

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant:	Dresti et al.)	Examiner:	Huynh, Son P.
)		
Application No.:	10/749,089)	Art Unit:	2623
)		
Filing Date:	December 30, 2003)	Attny Doc.:	81230.87US2
)		
Title:	USER INTERFACE FOR A REMOTE CONTROL APPLICATION)		
)		

SECOND SUBSTITUTE APPEAL BRIEF

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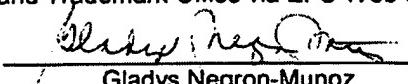
Dear Sir:

This appeal is being filed in response to the Examiner's final rejection of claims 21-31 which rejection was set forth in the Office Action mailed July 20, 2007. A timely Notice of Appeal was filed.

This second substitute Brief is being filed in response to the Notice of Non-Compliant Appeal Brief to again clarify that Appellant is only seeking review by the Board of the rejection of independent claim 21. Appellant is NOT seeking review by the Board of the rejection of claims 22-31.

The Commissioner is hereby authorized to charge any fee deficiency or credit overpayment to deposit account number 50-2428 in the name of Greenberg Traurig.

Certificate of Electronic Transmission: I hereby certify that this document is being transmitted electronically to the U.S. Patent and Trademark Office via EFS-Web on this 4th day of March, 2009.


Gladys Negron-Munoz

I. Real Party In Interest

The real party in interest is Universal Electronics Inc.

II. Related Appeals And Interferences

Appellant is not aware of any pending appeals, interferences, or judicial proceedings which may be related to, directly affect or be directly affected by or have a bearing on the Board's decision in the subject appeal.

III. Status Of The Claims

In the application, claims 21-31 remain pending and have been finally rejected. Claims 1-20 were canceled without prejudice during the course of prosecution. The Section VIII appendix provides a clean, double spaced copy of pending claims 21-31.

IV. Status Of Amendments

The claims are in condition for appeal – no amendments to the claims are pending.

V. Summary Of The Claimed Subject Matter

In accordance with 37 CFR § 41.37(c)(1)(v), the following provides a concise explanation of the subject matter defined in each of the independent claims involved in the appeal with reference to the specification and to the drawings by reference characters where applicable:

Independent claim 21 is directed to a method for displaying programming information (Fig. 8) in a display 12 of a remote control device 10 (Fig. 3; page 3, lines 18-22) having a memory 36, 38, 40 in which is stored a library of command codes for use in directly commanding operations of a plurality of appliances (Page 5, line 22-page 6, line 7), comprising: creating a favorites page 102 displayable in the display 12 of the remote control 10, the

favorites page 102 being comprised of a plurality of icons 104 wherein each of the plurality of icons is associated with a channel that is tunable to by at least one of the plurality of appliances (Fig. 7; page 8, lines 11-18);

assigning to each of the plurality of icons 104 within the favorites page 102 at least one command code from the library of command codes stored in the memory of the remote control device 10, the at least one command code assigned to each of the plurality of icons being appropriate for causing an intended recipient one of the plurality of appliances to tune to the channel associated with each of the plurality of icons when transmitted from the remote control device 10 directly to the intended recipient one of the plurality of appliances (Fig. 7; page 8, lines 11-22);

displaying in the display 12 of the remote control device 10 the favorites page 102 (Fig. 7); and

in response to the user selecting one of the plurality of icons 104 in the favorites page 102 when displayed in the display 12 of the remote control device 10, displaying in the display 12 of the remote control device 10 in a first window area 202, 204 information relevant to content available from a provider of content on the channel associated with the selected one of the plurality of icons 104. (Fig. 8; page 9, line 14-page 10, line 8).

VI. Grounds Of Rejection To Be Reviewed On Appeal

Claims 21-25 and 27-31 stand rejected under 35 U.S.C. § 103 as being rendered obvious by Ellis (U.S. Publication No. 2005/0028208) as modified by Baker (U.S. Patent No. 6,597,374) and claim 26 stands rejected under 35 U.S.C. § 103 as being rendered obvious by Ellis as modified by Baker as further modified by Kondo (U.S. Patent No. 6,763,522).

Appellant is only requesting review of the rejection of independent claim 21 under 35

U.S.C. § 103 based upon Ellis as modified by Baker.

Appellant is NOT seeking review of the rejection of dependent claims 22-25 and 27-31 under 35 U.S.C. § 103 based upon Ellis as modified by Baker.

Appellant is NOT seeking review of the rejection of dependent claim 26 under 35 U.S.C. § 103 based upon Ellis as modified by Baker as further modified by Kondo

VII. Argument

A) The Rejection Of Claim 21

i) Summary Of The Rejection Of Claim 21

Independent claim 21 stands rejected under 35 U.S.C. § 103 as being rendered obvious by Ellis as modified by Baker.

In rejecting the claim it was asserted that Ellis discloses the claimed creating a favorites page displayable in the display of a remote control where the favorites page is comprised of a plurality of icons wherein each of the plurality of icons is associated with a channel that is tunable to by at least one of a plurality of appliances. It was also asserted that Ellis “inherently” discloses assigning to each of the plurality of icons at least one command code from a library of command codes stored in the memory of the remote control device with the at least one command code assigned to each of the plurality of icons being appropriate for causing an intended recipient one of the plurality of appliances to tune to the channel associated with each of the plurality of icons when transmitted from the remote control device to the intended recipient one of the plurality of appliances so that a selected device performs the function. Finally, it was asserted that Ellis discloses displaying in the display of the remote control device the favorites page and, in response to a user selecting one of the plurality of icons when

displayed, displaying in the display a first window area having information relevant to content available from a provider of content on the channel associated with the selected one of the plurality of icons.

While the rejection of the claims asserted that “a library of command codes for use in commanding operations of a plurality of appliances must be stored in the memory of the remote access device so that when the user selects a button/key using the remote access device 24, a particular device at the user television performs appropriate operation” [sic.], it was later acknowledged, in direct contradiction, that Ellis does not disclose, teach, or suggest a remote control that is capable of directly commanding operations of an appliance. Nevertheless, it was then asserted that Baker discloses a remote control having a memory in which is stored a library of command codes for use in directly commanding operations of a plurality of appliances. As such, it was concluded that it would have been obvious to modify Ellis according to Baker “in order to reduce delay of transmitting command to controllable device.” [sic.]

ii) Applicable Law

A rejection under 35 U.S.C. § 103 can be maintained only if it has been demonstrated that all of the claimed elements were known in the prior art and that one skilled in the art could have combined the elements as claimed by known methods with no change in their respective functions with the combination yielding nothing more than predictable results. *KSR*, 550 U.S. at ___, 82 USPQ2d at 1395; *Sakraida v. AG Pro, Inc.*, 425 U.S. 273, 282, 189 USPQ 449, 453 (1976); *Anderson's-Black Rock, Inc. v. Pavement Salvage Co.*, 396 U.S. 57, 62-63, 163 USPQ 673, 675 (1969); *Great Atlantic & P. Tea Co. v. Supermarket Equipment Corp.*, 340 U.S. 147, 152, 87 USPQ 303, 306 (1950). Accordingly, when a proposed modification would render the prior art invention being modified (in this case Ellis) unsatisfactory for its intended purpose or

would change the principle of operation of the prior art invention being modified (in this case Ellis), it cannot be said that the proposed modification of the prior can merely yields predictable results or that a known technique would improve a similar device (in this case the Ellis system) as is required of a *prima facie* case of obviousness. see MPEP § 2143.01(V) citing *In re Gordon*, 733 F.2d 900, 221 USPQ 1125 (Fed. Cir. 1984) and MPEP § 2143.01(VI) citing *In re Ratti*, 270 F.2d 810, 123 USPQ 349 (CCPA 1959).

iii) The Rejection Of Claim 21 Must Be Withdrawn

a) All Of The Claimed Elements Cannot Be Found In The References

The claimed invention is directed to a remote control having a memory in which is stored a library of command codes for use in directly commanding operations of a plurality of appliances, such as televisions, cable boxes, etc., i.e., a remote control of the “universal type.” This claimed remote control is further provided with the ability to display a favorites page which includes a plurality of icons each of which is associated with a channel that is tunable to by at least one of the plurality of appliances. For example, Figs. 7 and 8 of the subject application illustrate a displayed favorites page having icons that are associated with channels such as “ABC,” “HBO,” etc. which channels are tunable to by means of an appliance that, in turn, is directly controllable through use of the claimed remote control. To setup the remote control whereby it may be used to cause a desired or appropriate one of the plurality of appliances to tune to a channel that is associated with an icon of the favorites page, the claims further call for the icons of the favorites page to be assigned at least one command code from the library of command codes resident within the memory of the remote control. The assigned at least one command code will thus cause an intended one of the plurality of appliances to tune to the channel that is associated with its respective icon when transmitted from the remote control

directly to the appliance (e.g., an icon may be assigned one or more command codes recognizable by the television as a directive to tune to channel 7 on which "ABC" is broadcast, another icon may be assigned one or more command codes recognizable by the cable box as a directive to tune to channel 120 on which "HBO" is broadcast, etc.). As further set forth within the claims, the remote control will respond to a user selecting an icon within a favorites page displayed on the remote control by further displaying on the remote control information that is relevant to the channel associated with the selected icon (e.g., the remote control may display "HBO" programming information in response to the icon that is associated with the "HBO" channel being selected).

In rejecting the claims, it was asserted that, among other things, Ellis "inherently" discloses assigning to each of the icons of a favorites page displayed in a display of a remote control device an appropriate command code from a library of command codes stored within a memory of the remote control device to thereby allow for the tuning of an intended target one of a plurality of appliances to a channel associated with a selected one of the icons of the favorites page (see bottom of pg. 6, rejection of July 20, 2007).

In response, it is respectfully submitted that, to be inherently described in a reference the reference "must make clear that the missing descriptive matter is necessarily present in the thing described and that it would be so recognized by persons of ordinary skill," i.e., inherency "may not be established by probabilities or possibilities" and the mere fact that a certain thing may result from a given set of circumstances is not sufficient. *Continental Can Co. USA v. Monsanto Co.*, 948 F.3d 1264 (Fed. Cir. 1991).

Turning now to Ellis, it is respectfully submitted that Ellis describes a system in which a local interactive television program guide is provided for each home appliance and a system in

which it is *the local interactive television program guide* that is used to set reminders, control appliance program recording, control appliance channel tuning, etc. Ellis further describes that these *functions of the local interactive television program guide* may be remotely accessed using a remote access device 24 (see Fig. 12, Figs. 13a-13e - each setting forth “remotely access functions of the local program guide over the remote access link...” as well as Fig. 14 and paras. 0137 and 0145+). Thus, it is respectfully submitted that it is clear that, within Ellis, the relevant programming of the remote access device 24 is used only to access functions provided by a local interactive television program guide and it is the local interactive television program guide that, in fact, commands appliance functions such as VCR recording control and/or channel tuning. (see paras. 0081, 0137, and 0138, and Fig. 19). Since the relevant programming of the remote access device 24 of Ellis is used only to access functions that are provided by a local interactive television program guide and since it is the local interactive television program that actually performs the functions - whether it be to program a VCR, tune a channel, etc. - it will be understood that the relevant programming of the remote access device 24 of Ellis is itself incapable of directly commanding any functions of an appliance, i.e., without the local interactive television program guide being a part of the system the remote access device 24 of Ellis is simply incapable of controlling any appliance. For at least this reason, it is respectfully submitted that, to the extent it was asserted within the Office Action that “a library of command codes for use in commanding operations of a plurality of appliances must be stored in the memory of the remote access device 24” (see bottom of pg. 5, rejection of July 20, 2007), it is respectfully submitted that the memory of the remote access device 24 of Ellis need not store command codes for commanding operations of a plurality of appliances but, to the contrary, need only store the “event data” that is necessary to inform a local interactive television program

guide which button a user selected to thereby allow the local interactive television program guide to perform a corresponding action, i.e., the remote access device of Ellis is nothing more than a device that provides “event data” to a controlling device as described in the subject application on page 6, lines 8-19 thereof.

From the foregoing it is respectfully submitted that it is evident that Ellis cannot be said to expressly or inherently disclose, teach, or suggest those claim elements that the rejection of the claims has asserted may be found within Ellis. More particularly, it is respectfully submitted that, when Ellis is fully and fairly considered in its entirety as is required, it simply cannot be said that the system disclosed within Ellis necessarily allows for assigning to each of the plurality of icons of a favorites page displayed in a remote control at least one command code from a library of command codes for use in directly commanding operations of a plurality of appliances stored within a memory of a remote control device wherein the assigned at least one command code is appropriate for causing an intended recipient one of the plurality of appliances to tune to a channel associated with each of the plurality of icons when the at least one command code is transmitted from the remote control device to the intended recipient one of the plurality of appliances as is required of “inherency.” Rather, it can only be said that the remote access device of Ellis is nothing more than a remotely located keypad/display and performs no function beyond informing the local interactive television program guide which button/key was selected by a user to thereby allow the local interactive television program guide to perform an operation in response to that event. (*see* paras. 0137 and 0096+). Since it has not been asserted that Baker discloses these claimed elements that are clearly missing from Ellis, which Baker does not, it is respectfully submitted that the combination of Ellis and Baker cannot be said to disclose, teach, or suggest each and every element set forth within the claims as is required of a rejection under

35 U.S.C. § 103. For at least this reason, it is respectfully submitted that the rejection of claim 21 under 35 U.S.C. § 103 based upon the combination of Ellis and Baker must be withdrawn.

b) The Espoused Modification Of Ellis Is Impermissible

As further concerns the espoused modification of Ellis to thereby allow the remote access device to transmit commands directly to an appliance “in order to reduce delay,” it is respectfully submitted that this espoused modification of Ellis would impermissibly remove from Ellis the functionality that is intended to be provided by the local interactive television program guide. In this regard, the interactive program guide of Ellis is the core element of the system of Ellis and Ellis describes that each separate appliance located within the home is to be associated within its own interactive program guide and each interactive program guide, while remotely accessible, is primarily designed to be operated locally. (*see*, for example, para. 0022 of Ellis). Accordingly, because the modification espoused within the rejection of the claims would remove from each appliance the interactive program guide and all control functionality provided thereby in favor of a centrally located remote control device, it is submitted that the espoused modification can only be seen as impermissibly changing the very principle by which the system of Ellis is intended to operate. For this further reason it is respectfully submitted that the combination of Ellis and Baker cannot support a *prima facie* case of obviousness under 35 U.S.C. § 103 and must be withdrawn. (*see* MPEP § 2143.01IV).

B) The Rejection Of Claims 22-25 and 27-31

It is respectfully submitted that dependent claims 22-25 and 27-31 are allowable for the reasons set forth above. For this reason, review of the rejection of dependent claims 22-25 and 27-31 is not being sought.

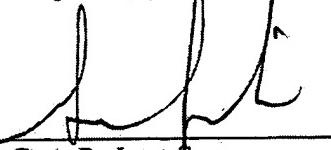
C) The Rejection Of Claim 26

It is respectfully submitted that dependent claim 26 is allowable for the reasons set forth above. For this reason, review of the rejection of dependent claim 26 is not being sought.

Date: March 4, 2009

By:

Respectfully Submitted;



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VIII. Claims Appendix

The following is a clean copy of the claims involved in the appeal:

21. A method for displaying programming information in a display of a remote control device having a memory in which is stored a library of command codes for use in directly commanding operations of a plurality of appliances, comprising:

 creating a favorites page displayable in the display of the remote control, the favorites page being comprised of a plurality of icons wherein each of the plurality of icons is associated with a channel that is tunable to by at least one of the plurality of appliances;

 assigning to each of the plurality of icons within the favorites page at least one command code from the library of command codes stored in the memory of the remote control device, the at least one command code assigned to each of the plurality of icons being appropriate for causing an intended recipient one of the plurality of appliances to tune to the channel associated with each of the plurality of icons when transmitted from the remote control device directly to the intended recipient one of the plurality of appliances;

 displaying in the display of the remote control device the favorites page; and

 in response to the user selecting one of the plurality of icons in the favorites page when displayed in the display of the remote control device, displaying in the display of the remote control device in a first window area information relevant to content available from a provider of content on the channel associated with the selected one of the plurality of icons.

22. The method as recited in claim 21, wherein the information displayed in the first window area is relevant to content currently being presented by the provider of content on the channel

associated with the selected one of the plurality of icons.

23. The method as recited in claim 21, wherein the information displayed in the first window area is relevant to content to be presented in the future by the provider of content on the channel associated with the selected one of the plurality of icons.

24. The method as recited in claim 22, further comprising displaying in the display of the remote control device in a second window area, in response to the user selecting the one of the plurality of icons, information relevant to content to be presented in the future by the provider of content on the channel associated with the selected one of the plurality of icons.

25. The method as recited in any one of claims 21-24, wherein, in response to the user selecting one of the plurality of icons in the favorites page when displayed in the display of the remote control device, the remote control device is caused to transmit the at least one command code assigned to the selected one of the plurality of icons.

26. The method as recited in claim 24, wherein the first window area and the second window area are displayed in the display of the remote control device simultaneously with the favorites page.

27. The method as recited in any one of claims 21-23, further comprising accepting user input into the remote control that functions to expand and contract the first window area in the display of the remote control device.

28. The method as recited in claim 27, wherein expansion and contraction of the first window area in the display of the remote control device allows overlay and display, respectively, of a user interface page simultaneously displayed in the display of the remote control having command function keys activatable to cause the remote control device to transmit directly to one or more of the plurality of appliances further command codes selected from the command code library.
29. The method as recited in claim 24, further comprising accepting user input into the remote control device that functions to expand and contract the first and second window areas displayed in the display of the remote control device.
30. The method as recited in claim 29, wherein expansion and contraction of the first and second window areas displayed in the display of the remote control device allows overlay and display, respectively, of a user interface page simultaneously displayed in the display of the remote control having command function keys activatable to cause the remote control device to transmit directly to one or more of the plurality of appliances further command codes selected from the command code library.
31. The method as recited in claim 21, wherein the favorites page is created and each of the plurality of icons within the favorites page is assigned at least one command code from the library of command codes stored in the memory of the remote control device in response to user input received directly into the remote control device.

IX. Evidence Appendix

No evidence is being submitted herewith.

X. Related Proceedings Appendix

No copies of decisions rendered by a court or the Board are being submitted herewith.

CHI 57,765,019v2